

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Airport

AGENDA DATE: December 15, 2009

CONTACT PERSON NAME AND PHONE NUMBER: Monica Lombraña, A.A.E. 780 4793

DISTRICT(S) AFFECTED: All

SUBJECT:

That the City Manager be authorized to sign the Lessor's Approval of Assignment of a Butterfield Trail Industrial Park Lease by and between the city of El Paso ("Lessor"), Miles El Paso Investments, Ltd. ("Miles") ("Assignor") and Nicar Properties, LLC. ("Assignee").

BACKGROUND / DISCUSSION:

Miles has been a Butterfield Trail Industrial Park ("BTIP") lessee at #10 Zane Grey since Kasco Ventures assigned one-half ownership of leasehold to Miles in May 1987.

The initial term of the Lease is for 36 years and 7 months, terminating on February 1, 2023 and presently generating annual revenues of \$29,296.32 on approximately 201,750 square feet of land. There are 12½ years remaining on the initial lease term, with one – 10 year option. All terms and conditions of Lease are to remain the same.

Miles now desires to assign the current Lease to Nicar Properties, LLC., which in turn, will become the landlord to Quality Fruits and Vegetables ("Quality"), a locally owned and operated produce business established in 1986. Quality has a main store location, a storage facility and a cross dock in Albuquerque, NM. It currently has 110 Employees and has plans to expand.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

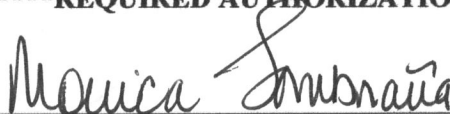
N/A. This is a revenue generating lease.

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Lessor's Approval of Assignment by and between the City of El Paso ("Lessor"), Miles El Paso Investments, LTD ("Assignor"), and Nicar Properties, LLC ("Assignee") for the following described property:

A portion of Lots 3 and 4, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A", an addition to the City of El Paso, El Paso County, Texas, municipally known as 10 Zane Grey Street, El Paso, Texas.

ADOPTED this ____ day of December 2009.

THE CITY OF EL PASO

ATTEST:

John F. Cook
Mayor

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Theresa Cullen
Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña
Monica Lombraña, A. A. E.
Director of Aviation

STATE OF TEXAS §
 §
COUNTY OF EL PASO §

LESSOR'S APPROVAL OF ASSIGNMENT

WHEREAS, The City of El Paso ("Lessor") entered into a Butterfield Trail Industrial Park Lease, with an effective date of July 1, 1986 (the "Lease"), with Kasco Ventures 221 ("Kasco"), for the property legally described as:

Lot 4 and a portion of Lots 3 and 5, Block 8, Butterfield Trail Industrial Park, Unit One, Replat "A", an addition to the City of El Paso, El Paso County, Texas;

WHEREAS, on March 31, 1987, the Lease was amended by a First Amendment to Lease, with an effective date of November 1, 1986, which deleted an identified portion from the Premises, and the Premises are now municipally known as 10 Zane Grey Street, El Paso, Texas;

WHEREAS, on May 26, 1987, Lessor approved an assignment of one half of Kasco's ownership in the Lease to The Miles Group, Inc. ("Miles"); and,

WHEREAS, Miles and Kasco entered into a Special Warranty Deed Assignment whereby Kasco assigned its entire interest in the Lease to Miles in exchange for Kasco's receipt of full ownership in Kasco Venture, Butterfield 1;

WHEREAS, Miles has transferred and assigned its interest in the Lease to Miles El Paso Investments, LTD;

WHEREAS, on May 6, 1997, Lessor approved the Lessor's Approval of Assignments from the Miles Group, Inc. to Miles El Paso Investments, LTD ("Assignor").

NOW, THEREFORE, Lessor and Assignor hereby consent and agree as follows:

1. **CONSENT TO ASSIGNMENT.** Lessor hereby approves and consents to the assignment of the Lease from Assignor to Nicar Properties, LLC., a Texas limited liability company ("Assignee"), on the condition that Assignee assumes and becomes liable to pay any and all sums owing or becoming due Lessor under the terms of the Lease from and after the effective date of the assignment of the Lease to Assignee, and upon the further condition that Assignee agrees to accept and abide by all the terms, covenants, and conditions of the Lease.
2. **PROOF OF INSURANCE AND INDEMNIFICATION.** Assignee has provided a certificate of insurance to evidence compliance with the insurance requirements of the Lease and expressly agrees to be bound by the indemnification provisions contained in the Lease.

3. **RELEASE AND ASSUMPTION.** Assignor shall be released and discharged from all rights, privileges and obligations under the Agreement arising from and after the effective date of the assignment of the Agreement and Assignee shall, as of the effective date of the assignment, enjoy all rights and privileges and be responsible for satisfying all such obligations the same as if the Agreement had originally been executed between Lessor and Assignee.
4. **RATIFICATION OF LEASE.** Except as expressly modified herein, no provision of this consent alters or modifies any of the terms and conditions of the Lease; all other terms and conditions of the Lease shall remain in full force and effect.
5. **ADDRESS FOR NOTICE.** Notices to Assignee and Assignor shall be sufficient if sent by certified mail, postage prepaid, addressed to:
- ASSIGNOR:** Miles El Paso Investments, LTD.
c/o John Birkelbach
Mounce, Green, Myers, Safi, Paxson & Galatzan, PC
P. O. Box 1977
El Paso, Texas 79950
- ASSIGNEE:** Nicar Properties, LLC
Nick J. Delgado, President
4508 Eleanor Way
El Paso, Texas 79922
6. **AUTHORIZED REPRESENTATIVE.** The persons signing this Lessor's Approval of Assignment on behalf of the Assignee, Assignor, and Guarantor represent and warrant that they have the legal authority to bind the Assignee, Assignor or Guarantor, respectively, to the provisions of this Lessor's Approval of Assignment.
7. **NON-WAIVER.** The Lessor's Approval of Assignment hereby given by Lessor shall not end the need for Lessor's consent for any future assignments.
8. **EFFECTIVE DATE.** The Effective Date of this Lessor's Approval of Assignment will be December 21, 2009.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

APPROVED THIS ____ day of _____, 2009.

LESSOR: CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

Theresa Cullen
Deputy City Attorney

APPROVED AS TO CONTENT:

Monica Lombraña, A.A.E.
Director of Aviation

LESSOR'S ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 2009, by **Joyce A. Wilson** as **City Manager** of the **City of El Paso, Texas** (Lessor).

My Commission Expires:

Notary Public, State of Texas

(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNOR: Miles El Paso Investments,
LTD

By: [Signature]
Printed Name: Daniel A. Miles
Title: Sec.

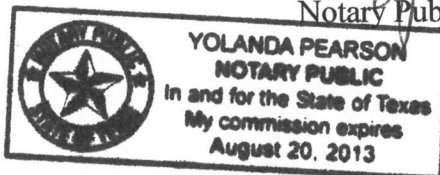
ASSIGNOR'S ACKNOWLEDGMENT

THE STATE OF Texas)
)
COUNTY OF El Paso)

This instrument was acknowledged before me on this 2 day of Dec, 2009, by
Daniel A. Miles as Secretary of **Miles El Paso Investments,**
LTD. (Assignor).

My Commission Expires:

[Signature]
Notary Public, State of Texas



(SIGNATURES CONTINUE ON THE FOLLOWING PAGE)

ASSIGNEE: Nicar Properties, LLC

By: Nick Delgado
Printed Name: Nick Delgado
Title: President

ASSIGNEE'S ACKNOWLEDGMENT

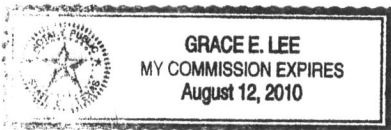
THE STATE OF TEXAS
COUNTY OF EL PASO)

This instrument was acknowledged before me on this 30th day of NOVEMBER, 2009, by
NICK DELGADO as PRESIDENT of **Nicar Properties, LLC** (Assignee).

My Commission Expires:

8-12-2010

Grace E. Lee
Notary Public, State of TEXAS



PROPERTY DESCRIPTION
4.631 ACRES

being the description of a portion of Lots 3 and 4, Block 8, Butterfield Trail Industrial Park Unit 1, Replat "A", City of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING for reference at a City Monument at the centerline intersection of Butterfield Trail Boulevard (140.00 feet wide) and Zane Grey Street (90 feet wide);

THENCE, along the centerline of, said Zane Grey Street, South $00^{\circ}59'34''$ East, a distance of 733.50 feet to a point;

THENCE, leaving said centerline, North $89^{\circ}00'26''$ East, a distance of 45.00 feet to a point in the easterly right-of-way line of said Zane Grey Street and POINT OF BEGINNING for the herein described tract;

THENCE, along said westerly right-of-way line, South $00^{\circ}59'34''$ East, a distance of 403.50 feet to a point for corner;

THENCE, leaving said right-of-way line, South $89^{\circ}00'26''$ West, a distance of 500.00 feet to a point for corner in the easterly right-of-way line of said Zane Grey Street;

THENCE, along said easterly right-of-way line, North $00^{\circ}59'34''$ West, a distance of 403.50 feet to the POINT OF BEGINNING and containing 4.631 acres of land.

Prepared By:
FAUGHT & ASSOCIATES INC.
El Paso, Texas
September 29, 1986
Job No. 5329-11

EXHIBIT "A"



EXHIBIT "A"

(Page 2 of 2)

~~NOT A GROUND SURVEY~~

Faught & Associates Inc.

Consulting Engineers

1651 Montana Ave.
El Paso, Texas 79902
(916) 542-4900

PORTION OF LOTS 3 AND 4, BLOCK 8;
BUTTERFIELD TRAIL INDUSTRIAL PARK UNIT 1
REPLAT "A"; CITY OF EL PASO, EL PASO COUNTY, TEXAS